IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. 2818 OF 2005

Shri Mohammed Alamgir Khan ....Petitioner.

V/s

Additional Collector (Encroachment)
and others. .....
Respondents.

Mr. U.S. Upadhyay for the Petitioner.

Mr. Pradeep Jadhav, AGP for Respondents.

CORAM: V.M. KANADE, J.
DATE : 13th June, 2007

P.C.

1. Heard the learned Counsel for the Petitioner and the learned AGP appearing on behalf of Respondents.

2. By this Petition, Petitioner is challenging the orders passed by Respondent Nos. 1 and 2 dated 21/03/2002, 27/08/2002, 19/11/2004 and 19/07/2005. It is the case of the Petitioner that he has been residing in the disputed premises prior to 1995. It is his case that, initially, the structure was in the name of Mr. Lal Mohd. Khan. However, by an affidaivt dated 31/07/1991, the premises were

transferred in the name of the Petitioner. It is the case of the Petitioner that the ration card and the driving licence which was issued prior to 1994 clearly establish that he is residing in the premises prior to 1995.

3. On 21/03/2002, Tahsildar, Andheri issued notice and the Petitioner was asked to evict the premises. Against this order, the Petitioner preferred an appeal before the Deputy Collector. However, on 27/08/2002, the Deputy Collector rejected the appeal which was filed by the Petitioner. The Petitioner thereafter challenged the said order before the Additional Collector who also confirmed the order passed by the Tahsildar by his order dated 19/11/2004. Against this order, the Petitioner filed an appeal under section 257 of the Maharashtra Land Revenue Code before the Additional Commissioner, Konkan Division. This appeal, however, was dismissed on 19/07/2005.

4. It is submitted by the learned Counsel appearing on behalf of the Petitioner that all the authorities have not taken into consideration the documentary evidence on

record which clearly establish that the structure is in existence prior to 1995.

5. A perusal of the said impugned order clearly reveals that the said order does not take into consideration the documents which were tendered by the Petitioner herein and, in any case, if some of the documents are considered by the appellate authorities, the said evidence has been discarded for improper reasons. In my view, therefore, it will be appropriate if the matter is remanded to the Deputy Collector (Encroachment).

6. Accordingly, the matter is remanded to the Deputy Collector (Encroachment). The Petitioner shall appear before the Deputy Collector (Encroachment) on 16/07/2007 alongwith all the documents on which he intends to rely. The Deputy Collector (Encroachment) shall, thereafter, fix the appeal for further hearing and after giving personal hearing to the Petitioner decide the case as expeditiously as possible and, in any case, within a period of six months. With these directions, rule is made absolute. The impugned

orders dated 27/08/02, 19/11/04 & 19.7.05 are quashed and set aside.

7. Parties shall act on the authenticated copy of this order.

(V.M. Kanade J.)